

#### § 4.1158

penalty below that of the proposed assessment and a timely petition for review of his decision is not filed with the Board or the Board refuses to grant such a petition, the Department of the Interior shall have 30 days from the expiration of the date for filing a petition with the Board if no petition is filed, or 30 days from the date the Board refuses to grant such a petition, within which to remit the appropriate amount to the person who made the payment, with interest at the rate of 6 percent, or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the administrative law judge increases the amount of the civil penalty above that of the proposed assessment, the administrative law judge shall order payment of the appropriate amount within 30 days of receipt of the decision.

[43 FR 34386, Aug. 3, 1978, as amended at 59 FR 1488, Jan. 11, 1994]

#### § 4.1158 Appeals.

Any party may petition the Board to review the decision of an administrative law judge concerning an assessment according to the procedures set forth in § 4.1270.

#### REVIEW OF SECTION 521 NOTICES OF VIOLATION AND ORDERS OF CESSATION

#### § 4.1160 Scope.

These regulations govern applications for review of—

(a) Notices of violation or the modification, vacation, or termination of a notice of violation under section 521(a)(3) of the Act; and

(b) Orders of cessation which are not subject to expedited review under § 4.1180 or the modification, vacation, or termination of such an order of cessation under section 521(a)(2) or section 521(a)(3).

#### § 4.1161 Who may file.

A permittee issued a notice or order by the Secretary pursuant to the provisions of section 521(a)(2) or section 521(a)(3) of the Act or any person having an interest which is or may be adversely affected by a notice or order subject to review under § 4.1160 may file an application for review with the

#### 43 CFR Subtitle A (10–1–97 Edition)

Hearings Division, OHA, 4015 Wilson Boulevard, Arlington, Va. 22203.

#### § 4.1162 Time for filing.

(a) Any person filing an application for review under § 4.1160 *et seq.* shall file that application within 30 days of the receipt of a notice or order or within 30 days of receipt of notice of modification, vacation, or termination of such a notice or order. Any person not served with a copy of the document shall file the application for review within 40 days of the date of issuance of the document.

(b) No extension of time will be granted for filing an application for review as provided by paragraph (a) of this section. If an application for review is not filed within the time period provided in paragraph (a) of this section, the application shall be dismissed.

[51 FR 16321, May 2, 1986]

#### § 4.1163 Effect of failure to file.

Failure to file an application for review of a notice of violation or order of cessation shall not preclude challenging the fact of violation during a civil penalty proceeding.

#### § 4.1164 Contents of application.

Any person filing an application for review shall incorporate in that application regarding each claim for relief—

(a) A statement of facts entitling that person to administrative relief;

(b) A request for specific relief;

(c) A copy of any notice or order sought to be reviewed;

(d) A statement as to whether the person requests or waives the opportunity for an evidentiary hearing; and

(e) Any other relevant information.

#### § 4.1165 Answer.

(a) Where an application for review is filed by a permittee, OSM as well as any other person granted leave to intervene pursuant to § 4.1110 shall file an answer within 20 days of service of a copy of such application.

(b) Where an application for review is filed by a person other than a permittee, the following shall file an answer within 20 days of service of a copy of such application—